

David Drumm (“Drumm”) appeals from a jury conviction in Delaware Circuit Court of Class B misdemeanor false informing. He raises one issue: whether the trial court erroneously allowed the State to amend the charging information to conform to the evidence during trial. Concluding that Drumm has waived this argument, we affirm.

Facts and Procedural History

On January 31, 2006, a Muncie police officer observed Drumm driving recklessly. The officer stopped Drumm, who appeared to be intoxicated, and asked his name. Drumm responded that his name was Douglas Drumm. Drumm began eating a Cinnabon and then admitted to drinking earlier in the day. The officer observed two unopened forty-ounce beer bottles on the passenger-side floorboard. Drumm also informed the officer that the truck he was driving belonged to Richard Kummer, who had been shot earlier in the day. The primary suspect in the shooting was Drumm’s sister.

In the course of investigating the shooting, police learned Drumm’s true identity and that his drivers license had been revoked. Drumm admitted that his name was actually David Drumm and that he had been using his brother’s name.

The State charged Drumm with Class D felony operating a vehicle as a habitual traffic violator, Class A misdemeanor operating while intoxicated, Class D felony auto theft, and Class D felony identity deception. A jury trial commenced on April 24, 2006. At the conclusion of the State’s evidence, the prosecutor moved to amend the information on Count IV from identity deception to Class B misdemeanor false informing. The trial court granted the motion over Drumm’s objection. The jury convicted Drumm of operating a vehicle as a habitual traffic offender and false informing. The trial court

sentenced Drumm to concurrent terms of three years for operating as a habitual traffic offender and 180 days for false informing. Drumm now appeals.

Discussion and Decision

Drumm challenges the trial court's decision to allow the State to amend the charging information during trial. Drumm concedes "that a charging information may be amended at any time as long as the amendment does not prejudice the substantial rights of the defendant." Br. of Appellant at 7 (citing Parks v. State, 752 N.E.2d 63, 65 (Ind. Ct. App. 2001)). He then argues that the amendment of the charge here deprived him of a "meaningful opportunity to defend[.]" Id. at 8.

Had Drumm seriously believed that the amendment of the charge prejudiced him in any way, he should have requested a continuance to further evaluate and prepare his case in light of the amendment. Wright v. State, 690 N.E.2d 1098, 1104 (Ind. 1997). See also Haak v. State, 695 N.E.2d 944, 951 n.5 (Ind. 1998). Having failed to request a continuance after the court granted the motion to amend, Drumm has waived this issue on appeal. Haymaker v. State, 667 N.E.2d 1113, 1114 (Ind. 1996); Daniel v. State, 526 N.E.2d 1157, 1162 (Ind. 1988).

Affirmed.

NAJAM, J., and MAY, J., concur.